



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

February 5, 2015

Mr. James Justice
Chairman and CEO
Greenbrier Hotel Corporation
300 W. Main Street
White Sulphur Springs, WV 24986

Dear Mr. Justice:

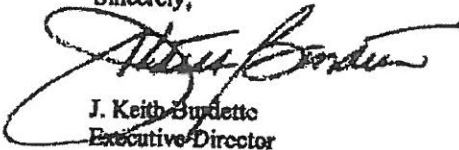
The West Virginia Development Office ("WVDO") has completed its review of your tourism development project application and has determined that it satisfies the criteria set forth in W. Va. Code § 5B-2E-5(c). Accordingly, the WVDO hereby approves the Greenbrier Hotel Corporation's status as an "Approved Company" under the West Virginia Tourism Development Act (the "Act").

Based on the documentation provided in your application, the total approved costs for your project is \$27,038,282 and the maximum amount eligible for a credit against the West Virginia consumer sales and use tax is \$9,463,399 consistent with the requirements set forth in the Act. The WVDO will provide you with a draft agreement to govern your participation in this program on or before February 16, 2015.

In the meantime if you have any questions, please call Todd Hooker, Manager of Tourism Development, at 304-558-2234.

Congratulations on your achievement.

Sincerely,



J. Keith Burdette
Executive Director

JKB/teh

ENCLOSURE

cc: Todd Hooker

TOURISM DEVELOPMENT EXPANSION PROJECT AGREEMENT

This Tourism Development Expansion Project Agreement (this "Agreement"), dated and effective April 20, 2015, is between the West Virginia Development Office, a division of the West Virginia Department of Commerce (the "WVDO"), and The Greenbrier Hotel Corporation, a West Virginia Corporation (the "Greenbrier") (sometimes, collectively, the "Parties").

RECITALS

- A. The West Virginia Tourism Development Act is designed to induce the creation of new, or the expansion of existing, tourism development projects in West Virginia, as more specifically set forth in W. Va. Code § 5B-2E-1, et. seq. (the "Act"); and
- B. The Greenbrier constructed a multi-use athletic and entertainment facility in White Sulphur Springs, West Virginia with its primary purpose being to expand existing tourism opportunities in West Virginia (the "Expansion Project"); and
- C. The Greenbrier submitted an application to the WVDO in accordance with the Act and incurred \$27,038,282.00 in applicable development costs which directly relate to constructing and completing the Expansion Project (the "Approved Costs"); and
- D. The WVDO is the state agency charged with approving tourism development project applications under the Act and granting project applicants the status of "Approved Company" on behalf of the state of West Virginia; and
- E. The Expansion Project satisfies the definition of a tourism development expansion project under the Act and falls within the purview of the Act; and
- F. The Greenbrier opened the Expansion Project to the public on July 1, 2014; and
- G. By letter dated February 5, 2015, the WVDO granted the Expansion Project final approval and extended to the Greenbrier the status of "Approved Company," a copy of said letter being attached hereto as Exhibit 1; and
- H. The Act provides that an approved company is allowed a credit against applicable West Virginia Consumer Sales and Service Tax up to a maximum amount of thirty-five percent of approved costs if the tourism development project site is located adjacent to recreational property owned or leased by the state of West Virginia or the federal government; and
- I. The Expansion Project is located adjacent to Greenbrier State Forest, a property which is owned and operated by the state of West Virginia; and

- J. The WVDO is authorized to enter into an agreement with an approved company with respect to its project under W. Va. Code § 5B-2E-6; and
- K. The Parties desire to enter into this Agreement to govern the duties and obligations of the Parties under the Act and during the term of this Agreement.

Now, therefore, in consideration of the mutual covenants and obligations contained herein, the investment to develop the Expansion Project, and the proceeds of the application fee, the Parties hereby agree as follows:

1. **Term.** This Agreement begins on April 20, 2015, and terminates on December 31, 2025, or until such time that the Greenbrier has exhausted its ability to seek a tax credit under the Act related to the Expansion Project.
2. **Approved Costs.**
 - a. The amount of Approved Costs for the Expansion Project shall not exceed Twenty-Seven Million Thirty-Eight Thousand Two Hundred Eighty-Two Dollars and no cents (\$27,038,282.00).
 - b. The maximum amount eligible for a tax credit against the West Virginia Consumer Sales and Use Tax shall not exceed Nine Million Four Hundred Sixty-Three Thousand Three Hundred Ninety-Nine dollars and no cents (\$9,463,399.00) (the "Eligible Tax Credit").
 - c. The methodology used to calculate and certify the amount of Approved Costs complies with the requirements set forth in the Act. A copy of an opinion letter from an independent certified public accountant certifying the actual costs of the Project is attached hereto as Exhibit 2.
3. **Completion Date and Opening.** The Greenbrier completed and caused the Expansion Project to be open to the public on July 1, 2014.
4. **Eligibility Criteria.**
 - a. **Short-Period Only.** Given that the Expansion Project was first open to the public on or about July 1, 2014, the short-period during which the Project was first open to the public occurred over an approximately five-month period during the calendar year ending December 31, 2014. That short period spanned the approximately five-month period beginning on or about July 1, 2014, and ending December 31, 2014. On or before April 30, 2015, the Greenbrier shall document and verify that:

- i. Twenty-five percent or more of visitors to the Expansion Project over the preceding short-period were from outside the state of West Virginia;
- ii. The Expansion Project was operating and open to the public for the prorated portion of 100 days (rounded to the nearest whole number) that is equal to the proportion that the number of days in the short-period bears to 365 days. For example, given a beginning date of July 1, 2014, 183 days would remain in calendar year 2015. The calculation would be:

$$\left(\frac{183 \text{ days in the short period}}{365 \text{ days in the year}} \right) \times 100 \text{ days} = 50 \text{ days (rounded)}$$

and

- iii. No outstanding obligations are due or owing under West Virginia state tax and revenue laws for the calendar year ending on December 31, 2014 or for any taxable period closing on or before December 31, 2014.
- b. **Calendar Years Subsequent to the Short-Period.** Given that the Expansion Project was first open to the public on or about July 1, 2014, the first full calendar year subsequent to the Project having been open to the public will be the year beginning January 1, 2015. On or before April 15, 2016, and on or before each April 15 thereafter, the Greenbrier shall document and verify that:
- i. Twenty-five percent or more of visitors to the Expansion Project over the preceding calendar year were from outside the state of West Virginia;
 - ii. The Expansion Project was operating and open to the public for at least 100 days over the preceding calendar year; and
 - iii. No outstanding obligations are due or owing under West Virginia state tax and revenue laws for the preceding calendar year or for any taxable period closing on or before the end of the preceding calendar year.
5. **Annual Report.** For periods in which this Agreement remains in effect, within forty-five calendar days after the end of each calendar year, beginning with the year ending December 31, 2015, the Greenbrier shall supply the WVDO with a written report certifying its compliance with the Eligibility Criteria set forth in paragraph 4(a) or 4(b) of this Agreement, as applicable. The WVDO will review and approve the contents of the Annual Report to certify to the West Virginia State Tax Commissioner that the Greenbrier is operating in compliance with the Act.
6. **Recapture.** For periods in which this Agreement remains in effect, if the Greenbrier fails to satisfy any of the Eligibility Criteria described in paragraph 4(a) or 4(b) of this

Agreement, as applicable, in the short-period or in any calendar year, as applicable, the Greenbrier shall forfeit the allowable tourism development expansion tax credit with respect to such short period or such calendar year and pay the applicable recapture tax required under the Act.

7. **Transferability of Credit.** The Greenbrier may transfer the Eligible Tax Credit to an eligible successor company subject to the written consent of the WVDO, which consent shall not be unreasonably withheld. An eligible successor company is any company that continues to operate the Expansion Project in a manner satisfactory to the WVDO and meets the Eligibility Requirements set forth in paragraph 4(a) and 4(b) of this Agreement, as applicable.
8. **Notices.** Each party giving or making any notice, request, demand, or other communication (for each, a "Notice") under this Agreement, shall give the Notice in writing and deliver that Notice via registered mail or email. Such notice shall be effective upon receipt.
 - a. **To the WVDO:**

Attn: Todd Hooker
State Capitol
Building 6, Room 504
Charleston, WV 25305
 - b. **To the Greenbrier:**

Attn: James Terry Miller, CFO and Treasurer
The Greenbrier Hotel Corporation
300 West Main St.
White Sulphur Springs, WV 24986
9. **Further Assurances.** The Greenbrier shall furnish the WVDO such further information or assurances, execute and deliver such additional documentation, agreements, or instruments, and take such other actions and do such other things, as may be reasonably necessary in the opinion of Counsel to the WVDO, to satisfy the provisions of the Act and this Agreement.
10. **Applicable Law.** This Agreement shall be construed and the rights of the Parties governed by the laws of the State of West Virginia.
11. **Amendments.** This Agreement may be amended only by a written document signed by each of the Parties, and only upon 30 days prior notice.

Tourism Development Expansion Project Agreement
Athletic Facility - Greenbrier Hotel Corporation
April 20, 2015

THE GREENBRIER HOTEL CORPORATION

By: 

James Terry Miller

Its: CFO and Treasurer

WEST VIRGINIA DEVELOPMENT OFFICE

By: 

J. Keith Bardette

Its: Executive Director



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

August 31, 2015

Mr. James Justice
Chairman and CEO
Greenbrier Hotel Corporation
300 W. Main Street
White Sulphur Springs, WV 24986

Re: Approved Company Status for Tennis Stadium and Wedding Chapel
Tourism Development Act Expansion Project Tax Credit Application

Dear Mr. Justice:

The West Virginia Development Office (WVDO) has completed its review of the above-referenced tourism development expansion project application and has determined that it satisfies the criteria set forth in W. Va. Code § 5B-2E-5(c). Accordingly, the WVDO hereby approves the Greenbrier Hotel Corporation's status as an "Approved Company" under the West Virginia Tourism Development Act (the "Act") for this expansion project.

Based on the estimated development costs described in your application, the total approved project cost is \$11,505,000.00, and the maximum amount eligible for a credit against the West Virginia consumer sales and use tax would be \$4,026,750.00, subject to the requirements set forth in the Act. Please provide this office with a certification of the actual costs incurred to construct and open the expansion projects to the public as soon as possible so that the WVDO can prepare an agreement to govern your participation in the tourism development program.

In the meantime, if you have any questions, please call Todd Hooker, of my staff, at (304) 558-2234.

Congratulations on your achievement.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Keith Bordette".

J. Keith Bordette
Executive Director

Kb/teh

cc: Todd Hooker

TENNIS STADIUM AND WEDDING CHAPEL TOURISM DEVELOPMENT EXPANSION PROJECT AGREEMENT

This Tennis Stadium and Wedding Chapel Tourism Development Expansion Project Agreement (this "Agreement"), dated and effective January 20, 2016, is between the West Virginia Development Office, a division of the West Virginia Department of Commerce (the "WVDO"), and The Greenbrier Hotel Corporation, a West Virginia Corporation (the "Greenbrier") (sometimes, collectively, the "Parties").

RECITALS

- A. The West Virginia Tourism Development Act is designed to induce the creation of new, or the expansion of existing, tourism development projects in West Virginia, as more specifically set forth in W. Va. Code § 5B-2E-1, et. seq. (the "Act"); and
- B. The Act provides that an approved company is allowed a credit against applicable West Virginia Consumer Sales and Service Tax up to a maximum amount of thirty-five percent of approved costs if the tourism development project site is located adjacent to recreational property owned or leased by the state of West Virginia or the federal government; and
- C. The Greenbrier constructed a multi-use tennis stadium and wedding chapel at the Greenbrier Resort in White Sulphur Springs, West Virginia with its primary purpose being to expand existing tourism opportunities in West Virginia (the "Expansion Projects"); and
- D. The Greenbrier submitted an application to the WVDO in accordance with the Act and estimated that it would incur certain development costs which directly relate to constructing and completing the Expansion Projects; and
- E. The WVDO is the state agency charged with approving tourism development expansion project applications under the Act and granting project applicants the status of "Approved Company" on behalf of the state of West Virginia; and
- F. The Expansion Projects satisfy the definition of a tourism development expansion project under the Act and fall within the purview of the Act; and
- G. The Greenbrier opened the first component of the Expansion Project, the multi-use tennis stadium, to the public on or about June 20, 2015; and the second component of the Expansion Project, the wedding chapel on or about September 11, 2015; and
- H. By letter dated August 28, 2015, the WVDO granted the Expansion Projects final approval and extended to the Greenbrier the status of "Approved Company," a copy of said letter being attached hereto as Exhibit 1; and

- I. By letter dated December 11, 2015, the certified public accounting firm Hess, Stewart, & Campbell, PLLC, certified the actual total costs expended by the Greenbrier to complete the Expansion Projects, a copy of said letter being attached hereto as Exhibit 2; and
- J. By letter dated January 20, 2016, the WVDO notified the Greenbrier of the maximum amount of credit eligible to the Greenbrier based upon the approved costs certified by Hess, Stewart, & Campbell, PLLC, a copy of said letter being attached hereto as Exhibit 3; and
- K. The Expansion Project is located adjacent to Greenbrier State Forest, a property which is owned and operated by the state of West Virginia; and
- L. The WVDO is authorized to enter into an agreement with an approved company with respect to its project under W. Va. Code § 5B-2E-6; and
- M. The Parties desire to enter into this Agreement to govern the duties and obligations of the Parties under the Act and during the term of this Agreement.

Now, therefore, in consideration of the mutual covenants and obligations contained herein, the investment to develop the Expansion Project, and the proceeds of the application fee, the Parties hereby agree as follows:

- 1. **Term.** This Agreement begins on January 20, 2016, and terminates on December 31, 2025, or until such time that the Greenbrier has exhausted its ability to seek a tax credit under the Act related to the Expansion Projects. For purposes of this Agreement the base year for purposes of determining the "base tax revenue amount" under the Act shall be the twelve month period ending on September 1, 2015.
- 2. **Approved Costs.**
 - a. The amount of Approved Costs for the Expansion Project shall not exceed Fifteen Million Seven Hundred Ninety-Three Thousand Nine Hundred Fifty Four Dollars and no cents (\$15,793,954.00);
 - b. The maximum amount eligible for a tax credit against the West Virginia Consumer Sales and Use Tax shall not exceed Five Million Five Hundred Twenty-Seven Eight Hundred Eighty Three Dollars and Ninety Cents (\$5,527,883.90) (the "Eligible Tax Credit"); and
 - c. The methodology used to calculate and certify the amount of Approved Costs shall comply with the requirements set forth in the Act.
- 3. **Completion Date and Opening.** The Greenbrier completed and caused the Tennis Stadium to be open to the public on or about June 20, 2015, and the Wedding Chapel to be open to the public on or about September 11, 2015. For purposes of this Agreement, the

completion date for the Expansion Projects shall be September 11, 2015 (the "Completion Date").

4. Eligibility Criteria.

- a. **Short-Period Only.** Given that the Expansion Project was fully completed and open to the public on or about September 11, 2015, the short-period during which the Project was first open to the public occurred over an approximately three and two-thirds month period during the calendar year ending December 31, 2015. That short period spanned the approximately three and two-thirds month period beginning on or about September 11, 2014, and ending December 31, 2015. On or before April 30, 2016, the Greenbrier shall document and verify that:

- i. Twenty-five percent or more of visitors to the Expansion Project over the preceding short-period were from outside the state of West Virginia;
- ii. The Expansion Project was operating and open to the public for the prorated portion of 100 days (rounded to the nearest whole number) that is equal to the proportion that the number of days in the short-period bears to 365 days. For example, given a beginning date of September 11, 2015, 111 days would remain in calendar year 2015. The calculation would be:

$$\left(\frac{111 \text{ days in the short period}}{365 \text{ days in the year}} \right) \times 100 \text{ days} = 30 \text{ days (rounded)}$$

and

- iii. No outstanding obligations are due or owing under West Virginia state tax and revenue laws for the calendar year ending on December 31, 2015 or for any taxable period closing on or before December 31, 2015.
- b. **Calendar Years Subsequent to the Short-Period.** Given that the Expansion Project was fully completed and open to the public on or about September 11, 2015, the first full calendar year subsequent to the Project having been open to the public will be the year beginning January 1, 2016. On or before April 15, 2017, and on or before each April 15 thereafter, the Greenbrier shall document and verify that:
- i. Twenty-five percent or more of visitors to the Expansion Project over the preceding calendar year were from outside the state of West Virginia;
 - ii. The Expansion Project was operating and open to the public for at least 100 days over the preceding calendar year; and

- iii. No outstanding obligations are due or owing under West Virginia state tax and revenue laws for the preceding calendar year or for any taxable period closing on or before the end of the preceding calendar year.
- 5. **Annual Report.** For periods in which this Agreement remains in effect, within forty-five calendar days after the end of each calendar year, beginning with the year ending December 31, 2016, the Greenbrier shall supply the WVDO with a written report certifying its compliance with the Eligibility Criteria set forth in paragraph 4(a) or 4(b) of this Agreement, as applicable. The WVDO will review and approve the contents of the Annual Report to certify to the West Virginia State Tax Commissioner that the Greenbrier is operating in compliance with the Act.
- 6. **Recapture.** For periods in which this Agreement remains in effect, if the Greenbrier fails to satisfy any of the Eligibility Criteria described in paragraph 4(a) or 4(b) of this Agreement, as applicable, in the short-period or in any calendar year, as applicable, the Greenbrier shall forfeit the allowable tourism development expansion tax credit with respect to such short period or such calendar year and pay the applicable recapture tax required under the Act.
- 7. **Transferability of Credit.** The Greenbrier may transfer the Eligible Tax Credit to an eligible successor company subject to the written consent of the WVDO, which consent shall not be unreasonably withheld. An eligible successor company is any company that continues to operate the Expansion Project in a manner satisfactory to the WVDO and meets the Eligibility Requirements set forth in paragraph 4(a) and 4(b) of this Agreement, as applicable.
- 8. **Notices.** Each party giving or making any notice, request, demand, or other communication (for each, a "Notice") under this Agreement, shall give the Notice in writing and deliver that Notice via registered mail or email. Such notice shall be effective upon receipt.
 - a. **To the WVDO:**

Attn: Todd Hooker
State Capitol
Building 6, Room 504
Charleston, WV 25305
 - b. **To the Greenbrier:**

Attn: James Terry Miller, CFO and Treasurer
The Greenbrier Hotel Corporation
300 West Main St.
White Sulphur Springs, WV 24986

9. **Further Assurances.** The Greenbrier shall furnish the WVDO such further information or assurances, execute and deliver such additional documentation, agreements, or instruments, and take such other actions and do such other things, as may be reasonably necessary in the opinion of Counsel to the WVDO, to satisfy the provisions of the Act and this Agreement.
10. **Applicable Law.** This Agreement shall be construed and the rights of the Parties governed by the laws of the State of West Virginia.
11. **Amendments.** This Agreement may be amended only by a written document signed by each of the Parties, and only upon 30 days prior notice.
12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

THE GREENBRIER HOTEL CORPORATION

By: 

James Terry Miller

Its: CFO and Treasurer

WEST VIRGINIA DEVELOPMENT OFFICE

By: 

J. Keith Burdette

Its: Executive Director



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East - Charleston, WV 25305-0311
(304) 558-2234 - (800) 982-3386 - WVDO.org

January 20, 2016

Mr. James Justice
Chairman and CEO
Greenbrier Hotel Corporation
300 W. Main Street
White Sulphur Springs, West Virginia 24986

Re: Amendment of Approved Costs for Tennis Stadium and Wedding Chapel
Tourism Development Act Expansion Project Tax Credit Application

Dear Mr. Justice:

By letter dated August 31, 2015, the West Virginia Development Office ("WVDO") notified the Greenbrier Hotel Corporation of its status as an approved company under the West Virginia Tourism Development Act (the "Act") for the above-referenced tourism development expansion projects, and established a maximum credit available to your company under the program based on the estimated development costs described in the application. The WVDO is in receipt of a letter dated December 11, 2015, from Hess, Stewart & Campbell, PLLC, certifying the actual total costs expended to complete development of the expansion projects.

After reviewing the certified costs submitted by Hess, Stewart, & Campbell, the total approved project cost is hereby revised as \$15,793,954.00, and the maximum amount eligible for a credit against the West Virginia consumer sales and use tax is \$5,527,883.90, subject to the requirements set forth in the Act.

If you have any questions, please call Todd Hooker of my staff at (304) 558-2234.

Sincerely,

J. Keith Burdette
Executive Director

Kb/teh

ENCLOSURE

cc: Todd Hooker

Exhibit 3



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

January 12, 2017

Mr. James Terry Miller
CFO and Treasurer
The Greenbrier Hotel Corporation
300 West Main Street
White Sulphur Springs, WV 24986

Dear Mr. Miller:

The West Virginia Development Office requires certain information annually so that it can certify to the Tax Commissioner that the approved company is in compliance with the law.

The foundation for this requirement can be found in WV Code 5B-2E-8(c). The specific information is as follows:

1. The need for approved companies to provide evidence annually that a minimum of 25 percent of annual attendance is attracted from outside the state. (WV Code 5B-2E-8(a)(1).
2. The need for approved companies to provide evidence annually that the project was open to the public for at least 100 days. (WV Code 5B-2E-8(a)(2).
3. Certificates of Good Standing. (WV Code 5B-2E-8(a)(3).

When providing the certificates discussed above; the approved company must also provide the West Virginia Development Office with Certificates of Good Standing in regards to workers compensation, employment programs, and state tax and revenue laws. It should be noted that these Certificates of Good Standing are to be effective at the beginning of Calendar Year 2016.

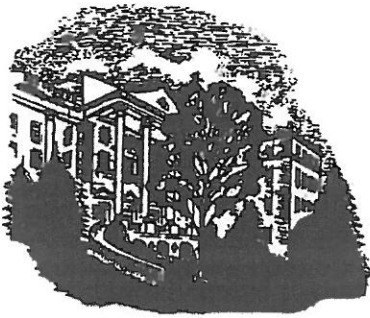
Should you have any questions, please do not hesitate to contact me at (304) 558-2234.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd E. Hooker".

Todd E. Hooker
Deputy Director
Business and Industrial Development

TEH/sjl



TELEPHONE (304) 536-1110
FACSIMILE (304) 536-7854
<http://www.greenbrier.com>

The
Greenbrier®

300 WEST MAIN STREET • WHITE SULPHUR SPRINGS • WEST VIRGINIA 24986

September 8, 2017

West Virginia Department of Commerce
West Virginia Development Office
State Capitol
Building 6, Room 504
Charleston, WV 25305

RE: Greenbrier Tennis Stadium and Wedding Chapel
Tourism Development Expansion Project
Effective January 20, 2016

Please be advised that we choose to select the one-year deferral option in recapturing the tax credit authorized for the Tennis Stadium/Wedding Chapel Expansion Project.

Because of the June 23, 2016 flood and our extended slow recovery from that catastrophe we have been unable to generate adequate revenue which would allow for the necessary incremental WV sales tax to apply the credit against.

We may be able to use a small portion of this credit by the end of 2017, and possibly the full annual credit in 2018.

The Greenbrier appreciates your forbearance in administering this credit and can assure you that we will keep you updated on all future activity, the 2016 flood really hindered our ability to stay on top of many important issues in the business.

Sincerely,

James T. Miller
Vice President of Operations